

CALIFORNIA LITIGATION:

Section Chair's Editorial
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Are the Rules of Court Uniform Yet?

By George L. Mallory, Jr.

The Mission Statement of the Litigation Section reads in part:

"It is the purpose of this section to promote excellence in all areas affecting dispute resolution, including...*uniform rules of court*..."

Consistent with the Mission Statement of the Litigation Section, a working group of lawyers and judges formed in 1993 to analyze the possibility of unifying Court rules in California. Representatives from the State Bar's interested organizations, including the Litigation Section, joined forces with representatives from the California Judges' Association (CJA) to analyze and propose resolutions to the Local Rules of Court quagmire.

Many Local Rules Abrogated Under New Rule 302 — Effective July 1, 1997, the diligent efforts of the Joint Working Group of Lawyers and Judges came to fruition when the Judicial Council enacted sweeping amendments to the California Rules of Court. New Rule of Court 302 is applicable to the form and format of papers, motion, demurrers, discovery and pleadings. It states in pertinent part:

"By enacting the rules in this title, the Judicial Council intends to occupy the field of form and format of papers, motions, demurrers, discovery and pleadings..."

General Form of Papers — California Rule of Court 311 now requires that practitioners have the name of the hearing judge (if available) and the action's filing date to the face of the caption. In addition, exhibits must be bound at the top and separated by tabs at the bottom of the page. Pages from a single deposition must be attached as one exhibit, and exhibits in foreign language must be translated under oath.

Format of Motions, Demurrers and Pleadings — California Rule of Court Rule 312 specifies the manner in which various motions, papers and pleadings must be structured. Documents such as Notices of Motions, Memoranda of Points and Authorities, and Declarations may be filed separately or bound together with an appropriate caption. New Rule 313 (f) however, indicates such documents shall be attached to the Notice of Motion "to the extent practical." Amendments to subsections (d), (e) of Rule 313 and (f) through (i), provide additional guidance on form. Copies of out of state authorities must be attached as exhibits. References to exhibits in any party's papers must specify page number and line number. Requests for Judicial Notice must be filed separately, while proposed orders and judgements are to be lodged separately.

Motions for Summary Judgment and/or Adjudication — New Rule 342 requires that the specific causes of action, defense, or damage issue to which summary adjudication is sought in the Notice of Motion, be set out verbatim in the separate statement of undisputed material facts. The rule also outlines the documents that must be filed in support of such motions, including a notice, a separate statement, memorandum of points and authorities, evidence in support of the motion, and any request for judicial notice.

Preliminary Injunctions and Bonds — Substantial amendments to Rule 359 set forth the form and format of applications for temporary restraining orders, orders to show cause and injunctions. An OSC must now be used when a TRO is sought, or if the party against whom preliminary relief is sought has not yet appeared. In the latter case, service of the OSC and TRO must be in the same manner as a Summons and Complaint.

Ex-Parte Applications — Rule 379 was amended to achieve uniformity. Most important, 24 hours notice must

now be given absent exceptional circumstances. In jurisdictions where Ex-Parte hearings are scheduled in the early morning, before the Judge's regular conferences, this effectively requires two days notice for Ex-Parte Hearings.

Other rules of Court concerning legal guardianship, Rule 1465(a) and service of papers, Rules 202.5 and 2008 also were amended and should be consulted by interested attorneys.

The Litigation Section would like to thank Robert S. Gerber, the Secretary of the Litigation Section, for his hard work and diligent effort as a member of the Joint Working Group of State Bar Representatives ultimately responsible for the sweeping changes resulting in the uniformity of the Court Rules discussed herein.

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